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IN THE

Supreme Court of the United States

No. 343

UNITED STATES AND INTERSTATE COMMERCE COMMISSION,

Appellants,

vs.

FRANK O. LOWDEN, JAMES E. GORMAN, AND JOSEPH B. FLEMING, AS TRUSTEES OF THE ESTATE OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY AND AS TRUSTEES OF THE ESTATE OF THE CHICAGO, ROCK ISLAND AND GULF RAILWAY COMPANY,

Appellees.

MOTION FOR LEAVE TO FILE BRIEF, CONSENT, AND BRIEF OF AMICI CURIAE

FRANK L. MULHOLLAND,
1040 Nicholas Bldg., Toledo, Ohio,
CLARENCE M. MULHOLLAND,
1040 Nicholas Bldg., Toledo, Ohio,
WILLARD H. McEWEN,
1040 Nicholas Bldg., Toledo, Ohio,
Amici Curiae.

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IN THE

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UNITED STATES AND INTERSTATE COMMERCE COMMISSION,

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Appellees.

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE

The undersigned hereby move the court for permission to file a brief as *amici curiae* in the above entitled action, and in connection therewith represent to the court as follows:

The question involved in this case is whether in proceedings brought by virtue of Section 5 of the Interstate Commerce Act (U. S. C. Title 49, Section 5) seeking authorization for a consolidation of carriers, or for the acquisition of control of one carrier by another, the Interstate Commerce Commission has jurisdiction to impose "just and reasonable" conditions for the protection of employees threatened with the loss of their positions.

The undersigned are the attorneys for the Railway Labor Executives' Association, an association of twenty labor organizations, who, by virtue of membership or otherwise, represent the vast majority of the employees of the railroad companies of the United States.

There are now pending before the Interstate Commission two cases, *i.e.—In the Matter of Acquisition of Control of The Colorado Southern Railway*, Finance Docket No. 12460, and *In the Matter of the Joint Application of The Minneapolis & St. Louis Railway Company and The Minneapolis & St. Louis Railroad Corporation*, Finance Docket No. 12414, to which the organizations aforesaid are parties. The first of the said cases involves identically the same, and the second substantially the same question as that presented to the court in this case. The undersigned have further been informed that other cases which will involve the same issue are in course of preparation for presentation to the Interstate Commerce Commission in the immediate future.

The interest of the undersigned, the Railway Labor Executives' Association, the labor organizations affiliated with the said association, and the many thousands of railway employees represented in the premises by the undersigned, is a continuing interest existing in equal

measure in all of the cases presently pending or anticipated in the future. As to the said cases the interests of the parties aforesaid will be foreclosed without opportunity for hearing unless the undersigned are permitted to file a brief and express their views herein as *amici curiae*.

Attorneys for both appellants and appellees have consented in writing to the filing of such brief by the undersigned as per the consent hereto attached.

Dated at Toledo, Ohio, this 1st day of November, 1939.

FRANK L. MULHOLLAND,
1040 Nicholas Bldg., Toledo, Ohio,

CLARENCE M. MULHOLLAND,
1040 Nicholas Bldg., Toledo, Ohio,

WILLARD H. McEWEN,
1040 Nicholas Bldg., Toledo, Ohio.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1939

No. 343

UNITED STATES AND INTERSTATE COMMERCE COMMISSION,

Appellants,

vs.

FRANK O. LOWDEN, JAMES E. GORMAN, AND JOSEPH B. FLEMING, AS TRUSTEES OF THE ESTATE OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY AND AS TRUSTEES OF THE ESTATE OF THE CHICAGO, ROCK ISLAND AND GULF RAILWAY COMPANY,

Appellees.

CONSENT TO FILING BRIEF AS AMICUS CURIAE

The undersigned, being all the parties to the above entitled action, hereby consent that a brief be filed by Frank L. Mulholland, Clarence M. Mulholland, and Willard H. McEwen, as *amicus curiae.*

(Signed) ROBERT H. JACKSON,
Solicitor General,
Attorney for Appellants.

(Signed) M. H. BELL,
W. F. PETER,
Attorneys for Appellees.

IN THE
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No. 343

UNITED STATES AND INTERSTATE COMMERCE COMMISSION,

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FRANK O. LOWDEN, JAMES E. GORMAN, AND JOSEPH B. FLEMING, AS TRUSTEES OF THE ESTATE OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY AND AS TRUSTEES OF THE ESTATE OF THE CHICAGO, ROCK ISLAND AND GULF RAILWAY COMPANY,

Appellees.

BRIEF OF AMICI CURIAE

This action grows out of an application made to the Interstate Commerce Commission by Frank O. Lowden, James E. Gorman and Joseph B. Fleming, as trustees of the estate of The Chicago, Rock Island and Pacific Railway Company, and as trustees of the estate of The Chicago, Rock Island & Gulf Railway Company for authority permitting the former named estate to acquire by lease the railroad lines and properties of the latter. This application was heard by Division 4 of the Commission which found that the proposed transaction would be in the public interest. It was developed at the hearing, however, that if this lease were consummated a number of persons employed by the Gulf in its accounting offices at Forth Worth, Texas, would necessarily be

moved to other points on the Rock Island system, and that a number of others would entirely lose their positions. Division 4, therefore, gave its consent to the proposed lease but imposed certain conditions found by it to be just and reasonable, the said conditions being as follows, to-wit:

> "1. No employee of the trustees of The Chicago, Rock Island and Pacific Railway Company and the trustees of The Chicago, Rock Island and Gulf Railway Company, hereinafter designated as the carriers, who is continued in service shall, for a period of five years from the commencement of operation under the said lease but not beyond the date of termination, for either carrier, of the reorganization proceedings under Section 77 of the Bankruptcy Act be placed, as a result of operation under said lease, in a worse position with respect to compensation and rules governing working conditions than he occupied at the date of commencement of operation under said lease, so long as he is unable, in the exercise of his seniority rights under existing agreements, rules, and practices, to obtain a position producing compensation equal to or exceeding the compensation of the position held by him at the date of commencement of such operation; so long as he is unable to obtain a position with said trustees yielding compensation equal to or exceeding his compensation at the time of the commencement of said operation, he shall be entitled to a monthly allowance equal to the difference between the monthly compensation of the position in which he is retained and the compensation of the position from which he was displaced, the latter monthly compensation to be considered one-twelfth of the total compensation received by him in the twelve months prior to his displacement, less compensation at the rate of compensation of his retained position for any time lost on account of his voluntary absences,

provided, however, that the employee's compensation which it is the purpose of this condition to guarantee shall in no case exceed that which he received in the 12 months prior to his displacement, reduced by any change in wage scales or revision of rules detrimental to the employee, which change or revision is made to affect railroad employees generally, provided further that nothing herein shall operate to affect in any respect the retirement on pension or annuity rights and privileges in respect of any of the employees, and provided further that if any employee elects not to exercise his seniority rights he shall be entitled to no allowance.

"2. Any employee of the carriers who is deprived of employment with said carriers, hereinafter designated as a dismissed employee, because of the abolishment of his position or the loss thereof as a result of the exercise of seniority rights by an employee whose position is abolished as a result of operation under said lease, shall be accorded a monthly allowance, designated dismissal allowance, based on length of service (except in the case of an employee with less than one year of service) equivalent to 60 per cent of the average monthly compensation of said dismissed employee during the last twelve months of his employment in which he earned compensation prior to the date he is first deprived of employment. This allowance shall be made to each eligible employee while unemployed during the period beginning with the date he is deprived of employment and extending in each instance for a length of time determined and limited by the following schedule, but not beyond the date of termination of the bankruptcy proceedings involving either carrier.

Length of service	Period of Payment Months
1 year and less than 2 years	6
2 years and less than 3 years	12
3 years and less than 5 years	18
5 years and less than 10 years	36
10 years and less than 15 years	48
15 years and over	60

A dismissal allowance shall cease prior to the expiration of the prescribed period in the event of failure of the employee, without good cause, to return to service after being notified by the trustees of a position for which he is eligible, and the dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his monthly earnings in such employment and his dismissal allowance exceed the amount upon which his dismissal allowance is based. An employee shall not be regarded as a dismissed employee in case of his resignation, death, retirement on pension, dismissal for good cause, or furlough because of reduction of forces due to seasonal requirements. A dismissal allowance shall cease prior to the expiration of the prescribed period in the event of resignation, death, retirement on pension, or dismissal for good cause.

"3. Any employee retained in the services of the carriers or restored to service from the group of employees entitled to receive a dismissal allowance, who is required to change the point of his employment as a result of operation under said lease, designated as a transferred employee, and who is required, within one year from the date of commencement of operation under said lease, to move his place of residence, shall be reimbursed for expenses of moving his household and other

personal effects, for the traveling expenses of himself and his immediate family, and for his own actual wage loss, not to exceed two days, the exact extent of the responsibility of the carriers to be agreed upon in advance by the said carriers and the employee affected, provided, however, that changes in places of residence, subsequent to the initial change caused by the operation under said lease, which result from the exercise of seniority rights shall not be considered as within the foregoing provision.

"4. Any transferred employee who owns his home, or an equity therein, shall be protected against any loss suffered in the sale thereof, within one year of the effective date of operation under said lease, for not less than its fair value, said fair value to be determined as of a date 30 days prior to the filing of the application in this proceeding by the carrier, and such fair value to be agreed upon by the carriers and each employee prior to such sale and, if any transferred employee holds an unexpired lease of a dwelling occupied by him as a home, the carriers shall protect him from loss and cost in securing cancellation of his lease."

Chicago, R. I. & G. Ry. Co. Trustees Lease, 230 I. C. C. 181.

The applicant trustees protested against the imposition of these conditions, and the matter was reargued before the whole Commission which affirmed the action of Division 4 insofar as the conditions were concerned.

This suit was accordingly brought for an injunction seeking to set aside the conditions in question on the ground that the Commission had no jurisdiction to impose them. The matter was heard before a three-judge court which ruled in favor of the plaintiffs. This ruling is now before this court for review.

NATURE OF ISSUES INVOLVED

The original application to the Interstate Commerce Commission was filed pursuant to Section 5, Paragraph 4 of the Interstate Commerce Act. The principles which are to govern the Commission in proceedings of this nature are set forth in Section 5, Paragraph 4(b), the relevant portion of which reads as follows:

> " * * If after such hearing the commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed consolidation, merger, purchase, lease, operating contract, or acquisition of control will be in harmony with and in furtherance of the plan for the consolidation of railway properties established pursuant to paragraph (3), and will promote the public interest, it may enter an order approving and authorizing such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon the terms and conditions and with the modifications so found to be just and reasonable."
>
> *U. S. C. Title* 49, *Section* 5, *Paragraph* 4(*b*).

The Commission in considering this case found that the conditions in question were "just and reasonable," and "in the public interest."

The issue presented by the case was stated by the lower court in these words:

> "There are no issues of fact involved, and the sole question to be determined is whether the Interstate Commerce Commission had the legal power to impose the conditions contained in the report of its Division Four and adopted by the entire commission in its report and order of April 3, 1939."

We have no quarrel with this statement, but on the contrary wish to emphasize its correctness. This action questions the *power* of the Commission to enter an order such as was made in this case, and not the *propriety* of the order itself in relation to the facts. Accordingly, there is no issue presented as to whether the order is reasonable in the premises, or whether it finds adequate support in the evidence. Indeed such issues could not be raised in the absence of the record of the proceedings before the Commission.

In light of the issue involved, the decision of the lower court is one of far-reaching significance. Its import is that *under no conceivable state of the evidence* in *any* case involving a consolidation of carriers, or an acquisition of control of one carrier by another, can the Commission act to protect the interests of employees, *regardless of situations or circumstances.*

Before proceeding with any further analysis of the decision of the court below it should be noted that any acquisition of control of one carrier by another, or any consolidation of carriers has necessarily a two-fold effect. The first effect is essentially private. For example, no bona fide application for authority to consummate such an acquisition or consolidation would be presented unless the proponents believed as a matter of sound business judgment that it would result in advantage to the corporations involved, which are private corporations, privately financed. Such a proposal must frequently carry with it the potentiality of private harm as well as that of private benefit. A transaction of this kind, however, does not exhaust its effects upon private parties, but in addition impinges upon the interest of the public. The

public consequences, however, do not arise independent of the private results but because of them. The latter are the intermediaries through which the effects of the consolidation or acquisition are transmitted to the public. Thus, a carrier may be financially strengthened by such an arrangement (a private benefit) and thereby its ability to render adequate service to the public increased (a public benefit). It was the possibility of public betterment or public harm which inspired the Congress to vest in the Interstate Commerce Commission a power of regulation in the premises.

The lower court interpreted the public interest as including only the interest of the traveling or shipping public. Proceeding from this interpretation, the court based its opinion on two conclusions, both of which we contend are fundamentally erroneous, and which we believe can be fairly summarized as follows:

First: While the Congress gave to the Commission power to pass upon and approve applications for authority to effect consolidations and acquisitions of control when found to be in the public interest, it gave to that body no authority to protect private interests necessarily concerned.

Second: The interests of employees are private interests purely, and therefore not subject to protection. Incidentally in this connection the court gave no consideration whatever to any possible reaction which the private injury of employees might have upon the interest of the public as that interest was interpreted by the court.

The ensuing argument in opposing the decision of the lower court will be developed according to the following outline:

I. The Interstate Commerce Commission has jurisdiction under Sec. 5, Par. 4, to impose conditions for the protection of the interests of employees.
   A. The Commission has jurisdiction to protect private interests involved in consolidations or acquisitions of control.
   B. The interests of employees are germane to the purposes of the statute and to the issues involved in the proceeding.

II. Injury to employees growing out of consolidations or acquisitions of control are matters affecting the public interest.

ARGUMENT

I. THE INTERSTATE COMMERCE COMMISSION HAS JURISDICTION UNDER SEC. 5, PAR. 4, TO IMPOSE CONDITIONS FOR THE PROTECTION OF THE INTERESTS OF EMPLOYEES.

A. The Commission Has Jurisdiction to Protect Private Interests Involved in Consolidations or Acquisitions of Control.

The natural first step in appraising the language of any statute is to consider the exact phraseology used. We reproduce for the convenience of the court the relevant terms of Section 5, Par. 4(b):

> "* * * If after such hearing the commission finds that, *subject to such terms and conditions and such modifications as it shall find to be just and reasonable*, the proposed * * * acquisition of control * * * *will promote the public interest*, it *may* enter an order approving and authorizing such * * * acquisition of control, upon the *terms and conditions and with the modifications so found to be just and reasonable.*" (Italics supplied.)

From this statutory language three conclusions may be drawn:

First: The Commission is empowered to approve a proposed acquisition of control only where such acquisition is such as will "promote the public interest." In the absence of such a showing the Commission would presumably be bound to reject the application.

Second: Where conformity to the standard of public interest is shown, the Commission "may" give its approval but is not compelled to do so. The use of the permissive "may," instead of the mandatory "shall" indicates clearly that even though the Commission finds that the public interest will be served by the acquisition proposed, there still rests in the Commission a discretion to refuse to grant the application. If so, on what basis may this discretion be exercised? The only reason of which we can conceive would be that the Commission has found that the proposal, while in the public interest, would be so inequitable or detrimental to private interests as to cause it to withhold its consent.

Third: In each case where the statute mentions the conditions which may be imposed by the Commission, it limits the power granted by requiring that these conditions be "just and reasonable." The phrase "public interest" *nowhere appears as modifying the word "conditions."* We can only conclude that the framers of the statute intended to repose in the Commission a discretion in relation to the scope of the conditions to be imposed, which was designed to be different from and broader than that contemplated by "public interest." Any other reasoning would reduce the phrase "just and reasonable" to the status of mere excess verbiage. Again

the conclusion is inescapable that Congress must have intended to vest in the Commission a jurisdiction to protect *private interests* in a proper case through the placing of "just and reasonable" conditions upon its approval of an application for an acquisition of control.

Summarizing the above, it appears that the language of the statute contemplates: (1) That the Commission may approve an application filed thereunder only when it finds that the transaction will "promote the public interest"; (2) That even after such a finding has been made, the Commission *may* reject the application if it is made to appear that private interests will be inequitably affected; (3) That the Commission may impose conditions on its application designed to protect either public or private interests, when such conditions are "just and reasonable."

We will show below that this conception of the Commission's jurisdiction is one to which the Commission itself has conformed, and which has received judicial approval. Before doing so, however, we wish to give some consideration to the constitutional adequacy of the jurisdictional limitation created by the phrase "just and reasonable." We are well aware of the constitutional requirement that power may not be delegated to an administrative body unless there is established an intelligible standard to govern the exercise of that power. In relation to the present case we do not mean to imply that the jurisdiction of the Commission under Sec. 5, Par. 4, is so broad that it may impose upon a contemplated acquisition of control conditions limited by no more definite standard than that of abstract ethics. By necessary implication the conditions must not only accord

with the ethical requirements of justice and reason, but must be germane to the matter submitted to the Commission for consideration. As stated by this court in *New York Central Securities Corporation vs. United States*, 287 U. S. 12, at page 28, conditions imposed pursuant to the terms of this section must be "appropriate to the decision which the Commission was called upon to make." We refer the court also to the case of *United States vs. Chicago, M., St. Paul & Pacific Ry. Co.*, 282 U. S. 311. This case dealt with the interpretation to be given to Section 20a, Paragraph 3, of the Interstate Commerce Act, and in particular to the jurisdiction of the Commission to impose upon its consent to the issuance of securities such conditions "as it may deem necessary or appropriate in the premises." We see no great distinction in meaning between the phrase last quoted and the language contained in Sec. 5, Para. 4(b), which is that under consideration here. In the dissenting opinion (pages 339-340) we find the following clear statement of the significance of such language:

> "Notwithstanding this broad language, it may be assumed that only those conditions which, like the present, are germane to the purposes of subsection (2) are intended; and that, consequently, only such terms and conditions may be annexed to the order as tend in some measure to remove objections to the issue, which legitimately might be the basis of withholding favorable action."
>
> (Note: The disagreement between the majority and minority opinions in this case does not in any way involve the validity of the above stated principles of law.)

It appears, therefore, that if Section 5, Paragraph 4, of the Interstate Commerce Act is interpreted as con-

ferring upon the Commission jurisdiction to protect private interests either by refusing its consent to an application filed pursuant to this paragraph, or by imposing just and reasonable conditions, a standard is prescribed which is sufficiently definite to guide the Commission in its decisions, and adequate in the face of constitutional objections. The "just and reasonable conditions" which the Commission may impose for the protection of such private interests must be "appropriate to the decision" of the Commission, must be "germane to the purposes" of the statute, and "such * * * as tend in some measure to remove objections * * * which legitimately might be the basis of withholding favorable action."

Proceeding to a consideration of the use which the Commission has made of its jurisdiction to protect private interests in these proceedings, we find its most frequent application to have been in behalf of minority stockholders who might be injuriously affected by the granting of an application as presented. The outstanding example of the exercise of such jurisdiction is to be found in the case of *Nickel Plate Unification*, 105 I. C. C. 425. After giving detailed consideration to the consolidation proposed, the Commission found on page 440 that:

> "Other meritorious groupings of these carriers might be proposed, but viewing the grouping presented in this application strictly from a transportation standpoint, we find that the proposed acquisitions of control are *in the public interest.*"
> (Note: Emphasis supplied.)

After having reached this decision, it then proceeded to an examination of the question: "Are the considerations, terms, and conditions of the proposed acquisitions

of control just and reasonable?" In proceeding to a consideration of this question it found that in case of some of the carriers control of which was to be acquired, the proposal had been forced through their respective boards of directors with little or no independent consideration; that requests for essential information by minority groups had been refused or evaded, and that the compensation or securities to be received by minority stockholders had not been determined on a basis whose fairness could be proved. Hence, although finding the proposal in the public interest from a transportation point of view, the Commission denied the application.

In a number of cases the Commission has approved proposals for the acquisition of control by the purchase of majority stock interests, but has attached conditions requiring the purchaser to offer to acquire minority interests for an equivalent consideration. *Buffalo, Rochester & Pittsburgh R. R.*, 158 I. C. C. 779; *Buffalo & Susquehanna R. R. Corp. Control*, 162 I. C. C. 656; *Upper Coos R. R.*, 166 I. C. C. 76; *Springfield Terminal R. R. Co.*, 166 I. C. C. 90; *Denver & Salt Lake R. R. Co.*, 170 I. C. C. 4; *Saint Louis Southwestern R. R. Co.*, 180 I. C. C. 175.

The court will note that in certain of these decisions the Commission has justified its action by reference, not only to the statutory provision authorizing it to impose just and reasonable conditions, but also by reference to the public interest. The Commission has not been explicit in stating the connection between the interests of minority stockholders and the interests of the public. We do not wish to be understood as arguing that there is no such connection. We merely contend that if the

interest of an employee to receive compensation for his acquired experience is purely private, then the interest of a stockholder to receive a return from his accumulated capital is likewise private. The conclusion which we draw from these cases is that in neither instance does the Interstate Commerce Act deprive the Commission of jurisdiction to protect such interests even if it is established that they are purely private in nature.

In this connection we particularly call to the attention of the court a decision of the United States Circuit Court of Appeals for the Sixth Circuit in the case of *Cleveland, Cincinnati, Chicago & St. Louis Railway Company vs. Jackson*, 22 Fed. (2d) 509. The action was one for injunction to prevent a proposed acquisition of control, an application for which had been filed with the Interstate Commerce Commission shortly before the institution of the suit. The issues presented as well as the ruling of the court are set forth in the following quotation from the opinion.

> "It is clear, we think, and indeed it is not denied, that a lease like the one involved here, if approved by the stockholders of both companies and executed on behalf of those companies, could have no effect until the Commission found that the making of the lease would 'be in the public interest,' and until it approved, not only the terms and conditions of the lease, but the consideration therefor, finding that such terms, conditions and considerations were 'just and reasonable in the premises' The plaintiff doubts that in determining the reasonableness of the terms the Commission has the right to consider the interest of minority stockholders, but admits that it 'has assumed such jurisdiction, although never confirmed by any court decision.' We think it is the duty of the Commission to *protect both the public and private inter-*

> *ests*, and although it finds that the acquisition will be in the public interest, it may not approve the lease unless it *further finds that the consideration, terms and conditions thereof are just and reasonable*—just to the lessor, the lessee, and necessarily to the stockholders of each. The ruling in *Nickel Plate Case*, 105 Interstate Com. Com'n. R. 425, evidences such an interpretation of its duties by the Commission." (Emphasis supplied.)

We conclude therefore that the decision of the lower court in this case to the effect that the Commission has no jurisdiction to impose conditions for the protection of the interests of employees *because* those interests are *private* is an entirely erroneous conclusion. The Commission has the jurisdiction to protect private interests; it has the power to do so through refusing approval of a proposed plan and through the imposition of conditions. The only limitation of its authority is that the issues presented through the assertion of these private interests must be germane to the purposes of the statute, and the conditions imposed by the Commission for their protection must be appropriate to the general decision which the Commission is called upon to make. Our next task will be one of examining the interests of the employees with regard to this requirement.

B. The Interests of Employees Are Germane to the Purposes of the Statute and to the Issues Involved in the Proceeding.

Combinations of carriers, acquisitions of control of some carriers by others, co-ordinations of services and pooling of facilities have in general one common goal. This goal is attained through eliminating duplication of

operations. The reaching of this result is the principal reason for the existence of a special policy regarding such projects in relation to carriers for by the elimination of such duplications carriers are enabled to strengthen their operating positions and offer to the public more adequate service. This is the "public interest" which the Act seeks to obtain.

These gratifying results, however, when considered from the reverse side of the picture present an entirely different aspect. Any elimination of operations means the elimination of the services of those men and women who perform the operations in question. Translated from the language of bookkeeping into that of human relationships it is apparent that any gain to the carrier or to the public is attained at the expense of an equivalent loss to employees. Whether or not the benefit is worth the price is not a question appropriate for discussion in this forum. We bring these facts to the court's attention merely for the purpose of showing that the effect of combinations, acquisitions of control, coordinations or pooling upon employees is *an inherent part of these arrangements.*

No intelligent critic would attempt to consider the problem of war, for example, and refuse to give attention to the fact that the result of a war is necessarily measured in its effect upon human lives and destinies. Is it more reasonable to insist that a responsible tribunal has been given jurisdiction to pass upon, approve or disapprove certain projected economic readjustments, yet has been denied the power to consider the inherent results of those readjustments expressed in terms of the interests of the human beings most affected?

The purpose of Section 5 of the Interstate Commerce Act, the attainment of that purpose in individual cases, and the orders of the Interstate Commerce Commission authorizing such attainment, all have as a *necessary consequence*, the loss of employment by employees. Certainly, therefore, the interests of those employees and the protection of their interests are matters inherent in and germane to the purpose of the statute.

The inescapable connection between carrier and public benefit on the one hand and private loss to employees on the other, has been consistently recognized by the Interstate Commerce Commission, by the carriers themselves and by the Congress. In the ensuing paragraphs we wish to point out to the court the instances and extent of this recognition.

Recognition by the Interstate Commerce Commission.

The Commission first recognized that the effect of consolidations upon employees was an inherent result of the consolidations themselves in its report *In the Matter of Consolidations of Railroads*, 185 I. C. C. 403, at 427, when it stated in relation to its modified plan of consolidation as follows:

> "In working out the modified plan herein approved it is expected that carriers will give careful consideration to the interests of their employees with the view of avoiding the imposition of undue hardships upon them in connection with the relocation and consolidation of shops and offices. When applications under section 5 of the act may be filed for our approval, the applicants will be expected to deal adequately with these questions and, to the extent necessary and warranted by the record, we will consider the imposition of such conditions as we may find to be proper

and within our jurisdiction. If any doubt exists as to our jurisdiction in the premises it should be safeguarded by Congress."

In the case of *Unification of Lines in Southern New Jersey*, 193 I. C. C. 183, the Commission again recognized this relationship although it refused to impose any conditions for the protection of employees because the evidence did not justify that course. The Commission said:

> "The record does not show that the proposed unification will involve a relocation and consolidation of shops and offices, which, on account of undue hardships imposed upon employees, might warrant the imposition of conditions in an authorization under section 5." (at page 198)

Two years after the announcement of the modified consolidation plan above noted the case of *St. Paul Bridge & Terminal Railway Company Control* came before the Commission. In the course of its opinion reported in 199 *I. C. C.* 588, *at pp.* 596 *and* 597 the Commission said:

> "The welfare of the employees affected by this proposal is unquestionably one of the matters of public interest which we have to consider. As we view the present case, no employee should, of necessity, be deprived of employment or be in a worse position with respect to his compensation because of the applicant's control of the terminal. Under the circumstances, we conclude that we should impose the condition in granting the application that the applicant maintain a separate seniority register for the employees of the terminal company employed in the territory now operated by it, and in future adjustments of employment resulting from necessary changes in traffic or oper-

ating conditions employees covered by such register will be given their pro rata share of the available work, and if, to maintain this relationship, transfer to other duties is required, no employee shall without his consent be in any worse position by reason of such transfer, in respect of the conditions of his service as a whole, including tenure of employment, remuneration, pensions, superannuation, sick fund, or other benefits or allowances, whether obtaining legally or by customary practice of the constituent or subsidiary company, as compared with the conditions of service formerly obtaining."

Again in the case of *Associated Railways Company Acquisition and Securities*, 228 I. C. C. 277 an application for the acquisition of control of the Minneapolis & St. Louis Railroad Company which contemplated the subsequent dismemberment of the system was disapproved by the Commission on a number of grounds, one of which is stated in the following excerpt found on page 336 of its opinion:

"Under the provisions of section 5 of the act, we may approve the proposed acquisitions only if we find that they will promote the public interest. As was stated in our report by division 4 in *St. Paul Bridge & Term. Ry. Co. Control*, 199 I. C. C. 588, 595, the public interest embraces the whole public and the public as a whole, and the interest of employees in changes of management, ownership, or operation of companies by which they are employed is a public as well as a private interest. The existing burden of unemployment on the general public is a matter of common knowledge. The dismissal of nearly 2,000 employees not only would be a great hardship on the employees themselves but would greatly increase the burden of unemployment in the communities where they reside. In

addition it would adversely affect those communities because of loss of substantial payrolls. Probably neither the amount which the applicants propose to pay the employees dismissed because of the proposed plan nor the full amount to which they would be entitled under the agreement of May 1936 would be sufficient to cover all their losses."

In the case of *Louisiana & Arkansas Railway Company Merger*, 230 I. C. C. 156 decided by Division 4 on the same day when the present case was decided, the same factors were considered, and the same ruling made as in the present case.

Thus over a period of years the Interstate Commerce Commission has frequently recognized that the effect upon employees brought about by consolidations, etc., of carriers is an integral part of such transactions, and a necessary concomitant of the very public purpose designed to be served by the statute.

Recognition by the Carriers. On May 21, 1936, there was executed at Washington, D. C., an Agreement between the representatives of some 140 railroad companies and the representatives of 20 railroad labor unions. This Agreement, known variously as the "Job Protection Agreement" or the "Washington Agreement," was signed only after long conferences and exhaustive discussions of the results of the coordination of carriers as expressed in terms of their effect upon employees. As finally consummated it constitutes a complete recognition on the part of the carriers who are parties thereto that the interest of the employees is necessarily involved in such coordinations, and is justly entitled to consideration and reasonable protection. The

Agreement has an added significance growing out of the fact that it is the source from which the Interstate Commerce Commission drew the conditions imposed in this case.

In order to demonstrate the points above noted, it will be necessary for us to quote at some length from this Agreement. The relevant portions of it read as follows:

> "Section 1. That the fundamental scope and purpose of this agreement is to provide for allowances to defined employees affected by coordination as hereinafter defined, * * *"
>
> "Section 2 (a). The term "coordination" as used herein means joint action by two or more carriers whereby they unify, consolidate, merge or pool in whole or in part their separate railroad facilities or any of the operations or services previously performed by them through such separate facilities."
>
> "Section 6 (a). No employee of any of the carriers involved in a particular coordination who is continued in service shall, for a period not exceeding five years following the effective date of such coordination, be placed, as a result of such coordination, in a worse position with respect to compensation and rules governing working conditions than he occupied at the time of such coordination so long as he is unable in the normal exercise of his seniority rights under existing agreements, rules and practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him at the time of the particular coordination, except however, that if he fails to exercise his seniority rights to secure another available position, which does not require a change in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as

occupying the position which he elects to decline.

"(b) The protection afforded by the foregoing paragraph shall be made effective whenever appropriate through what is hereby designated as a 'displacement allowance' which shall be determined in each instance in the manner hereinafter described. Any employee entitled to such an allowance is hereinafter referred to as a 'displaced' employee.

"(c) Each displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee and his total time paid for during the last twelve (12) months in which he performed service immediately preceding the date of his displacement (such twelve (12) months being hereinafter referred to as the 'test period') and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and average monthly time paid for, which shall be the minimum amounts used to guarantee the displaced employee, and if his compensation in his current position is less in any month in which he performs work than the aforesaid average compensation he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the average monthly time paid for during the test period.

"Section 7 (a) Any employee of any of the carriers participating in a particular coordination who is deprived of employment as a result of said coordination shall be accorded an allowance (hereinafter termed a coordination allowance), based on length of service, which (except in the case of an employee with less than one year of service) shall be a monthly allowance equivalent in

each instance to sixty per cent (60%) of the average monthly compensation of the employee in question during the last twelve months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the coordination. This coordination allowance will be made to each eligible employee while unemployed by his home road or in the coordinated operation during a period beginning at the date he is first deprived of employment as a result of the coordination and extending in each instance for a length of time determined and limited by the following schedule.

Length of Service	Period of Payment
1 yr. and less than 2 yrs.	6 months
2 yrs. and less than 3 yrs.	12 months
3 yrs. and less than 5 yrs.	18 months
5 yrs. and less than 10 yrs.	36 months
10 yrs. and less than 15 yrs.	48 months
15 yrs. and over	60 months

In the case of an employee with less than one year of service, the total coordination allowance shall be a lump sum payment in an amount equivalent to sixty (60) days' pay at the straight time daily rate of the last position held by him at the time he is deprived of employment as a result of the coordination.

"(c) An employee shall be regarded as deprived of his employment and entitled to a coordination allowance in the following cases:

1. When the position which he holds on his home road is abolished as result of coordination and he is unable to obtain by the exercise of his seniority rights another position on his home road or a position in the coordinated operation, or

2. When the position he holds on his home road is not abolished but he loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a re-

sult of said coordination, or by other employees, brought about, as a proximate consequence of the coordination, and if he is unable by the exercise of his seniority rights to secure another position on his home road or a position in the coordinated operation.

"(d) An employee shall not be regarded as deprived of employment in case of his resignation, death, retirement on pension, or on account of age or disability in accordance with the current rules and practices applicable to employees generally, dismissal for justifiable cause in accordance with the rules, or furloughed because of reduction in forces due to seasonal requirements of the service; nor shall any employee be regarded as deprived of employment as the result of a particular coordination who is not deprived of his employment within three years from the effective date of said coordination.

"(g) An employee receiving a coordination allowance shall be subject to call to return to service after being notified in accordance with the working agreement, and such employee may be required to return to the service of the employing carrier for other reasonably comparable employment for which he is physically and mentally qualified and which does not require a change in his place of residence, if his return does not infringe upon the employment rights of other employees under the working agreement.

"(h) If an employee who is receiving a coordination allowance returns to service the coordination allowance shall cease while he is so reemployed and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a coordination allowance. During the time of such reemployment however he shall be entitled to protection in accordance with the provisions of Section 6.

"(i) If an employee who is receiving a coordination allowance obtains railroad employment

(other than with his home road or in the coordinated operation) his coordination allowance shall be reduced to the extent that the sum total of his earnings in such employment and his allowance exceeds the amount upon which his coordination allowance is based; provided that this shall not apply to employees with less than one year's service.

"(j) A coordination allowance shall cease prior to the expiration of its prescribed period in the event of:

1. Failure without good cause to return to service in accordance with working agreement after being notified of position for which he is eligible and as provided in paragraphs (g) and (h).
2. Resignation.
3. Death.
4. Retirement on pension or an account of age or disability in accordance with the current rules and practices applicable to employees generally.
5. Dismissal for justifiable cause.

"Section 10 (a) Any employee who is retained in the service of any carrier involved in a particular coordination (or who is later restored to service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as result of such coordination and is therefore required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects and for the traveling expenses of himself and members of his family, including living expenses for himself and his family and his own actual wage loss during the time necessary for such transfer, and for a reasonable time thereafter, (not to exceed two working days), used in securing a place of residence in his new location. The exact extent of the responsibility of the carrier under this provision and the ways and means of transportation shall be agreed upon in advance be-

tween the carrier responsible and the organization of the employee affected. No claim for expenses under this section shall be allowed unless they are incurred within three years from the date of coordination and the claim must be submitted within ninety (90) days after the expenses are incurred.

(c) Except to the extent provided in paragraph (b) changes in place of residence subsequent to the initial changes caused by coordination and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this section.

"Section 11 (a) The following provisions shall apply, to the extent they are applicable in each instance, to any employee who is retained in the service of any of the carriers involved in a particular coordination (or who is later restored to such service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as a result of such coordination and is therefore required to move his place of residence:

1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by his employing carrier for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the coordination to be unaffected thereby. The employing carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other party.

2. If the employee is under a contract to purchase his home, the employing carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligations under his contract.

3. If the employee holds an unexpired lease of a dwelling occupied by him as his home, the employing carrier shall protect him from all loss and cost in securing the cancellation of his said lease."

(Note: Compare the above excerpts from Section 6 of the Agreement with Condition 1 imposed by the Commission; excerpts from Section 7 with Condition 2; excerpts from Section 10 with Condition 3; and excerpts from Section 11 with Condition 4.)

To this agreement the Rock Island System was and is a party.[1] By entering into this agreement the carriers generally, and the Rock Island in particular, recognized the necessary connection existing between "coordinations" and the interests of employees.

This same recognition finds further expression in another document to which we now refer. On September 20, 1938, the President of the United States appointed a committee consisting of three railroad executives and three executives of railroad labor unions for the purpose of considering the whole railroad problem and making recommendations as to government policy. On December 28, 1938, this committee tendered its report, from which we quote the following excerpt taken from page 32:

"After the details of any proposed consolidation have been determined by the interests involved, they should be embodied in an application for approval, addressed to the Transportation Board. In passing upon such an application, the Board should be governed by the following considerations:

(a) That the public interest will be served by assuring adequate transportation service;

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[1] It should be noted that the Washington Agreement itself does not apply to the present case inasmuch as intra system "coordinations" are not included within its scope.

(b) The possibility that the consolidation will isolate and injure weak railroads not included. The Board shall accordingly have the authority to require the inclusion of such roads upon equitable terms as a prerequisite to its approval;

(c) That the consolidation will not result in an increase in the total fixed charges;

(d) The interests of the employes affected. The Board shall examine into the probable results of the proposed consolidation and require, as a prerequisite to its approval, a fair and equitable arrangement to protect the interests of the said employes."

It may be objected that point (d) constitutes a recommendation for *new* legislation, and hence an admission that present legislation does not authorize a consideration of the interests of employees in such cases. It will be noted, however, that the first two of these four points are expressions of a jurisdiction already recognized as being possessed by the Commission under existing law. The third point is a specific reference to the general subject of carrier financing with regard to which the Commission has also exercised jurisdiction in relation to consolidation cases. There is no reason to believe that the committee intended its fourth point as any more of a recommendation for the conferring of a new jurisdiction than in the case of the first three. In any event, all four of these points are expressions of a jurisdiction already exercised by the Commission in such cases. The conclusion is rather that the committee intended a reiteration and clarification of a jurisdiction already believed to be in existence rather than a suggestion for the creation of new powers. This committee report is not cited as direct

authority supporting the existence of a present jurisdiction in the Commission, but rather as constituting an added recognition of the indissoluble connection existing between consolidations and coordinations and the interests of employees at whose expense they are necessarily effectuated.

Recognition by the Congress.

Section 5, Paragraph 4, of the Interstate Commerce Act was enacted in its present form as a portion of Title II of the Emergency Transportation Act of 1933. At the time of the consideration and approval of this statute the railroads of the country were facing a serious situation brought about by a decrease of the gross transportation business available and by an increase in competition for such business as remained. The purpose of the statute was to enable the railroads to meet this condition through the elimination of waste caused by needless duplications of service. The two titles of the act were closely related in purpose but provided different methods for the accomplishment of that purpose.

The first title dealt with coordinations of carriers by which was meant arrangements for joint use of facilities while the independence of the carriers themselves was fully preserved. It established administrative machinery through the office of the Federal Coordinator of Transportation whereby it was hoped that such coordinations could be brought about. This title was designed as a temporary measure only.

Title II, on the other hand, was intended to be permanent. It dealt with the same general subject matter as Title I, but concerned iteslf with pools, acquisitions of control, and combinations of carriers. It will be noted

that these devices are also methods of achieving "coordination" in a general sense, but through an actual merger, complete or partial, of the corporate agencies or the business enterprises of the carriers involved. Inasmuch as these matters and their regulation had already been considered in the Interstate Commerce Act, Title II of the Emergency Transportation Act, very naturally took the form of amendments to the earlier statute.

The points which we wish to emphasize in this connection are that Congress intended to achieve substantially the same purpose through the two titles of the statute; that that purpose could only be effected under either title by the elimination of those carrier services deemed to be duplications and wasteful, and that such elimination in either case could be effected only at the expense of the interests of employees. Otherwise stated, an injury to employees' interests was inherent in the proceedings contemplated under either title of the statute, and a showing of an appropriate recognition of that fact by Congress as to either title implies similar recognition in relation to the other.

That such a recognition was inherent in Title I cannot be doubted in view of the provisions of the statute itself, and the discussions which took place during committee hearings prior to its adoption. The Emergency Transportation Act makes certain provisions regarding coordinations effected pursuant to Title I thereof. These provisions are as follows:

> "Labor committees—(a) Appointment; hearings on contemplated orders. A labor committee for each regional group of carriers may be selected by those railroad labor organizations which, as representatives duly designated and authorized to act in accordance with the requirements of the Rail-

way Labor Act (45; c. 8), entered into the agreements of January 31, 1932, and December 21, 1932, with duly authorized representatives of the carriers, determining the wage payments of the employees of the carriers. A similar labor committee for each regional group of carriers may be selected by such other railroad labor organizations as may be duly designated and authorized to represent employees in accordance with the requirements of the Railway Labor Act (45; c. 8). It shall be the duty of the regional coordinating committees and the Coordinator to give reasonable notice to, and to confer with, the appropriate regional labor committee or committees upon the subject matter prior to taking any action or issuing any order which will affect the interest of the employees, and to afford the said labor committee or committees reasonable opportunity to present views upon said contemplated action or order."

"(b) Employees; limitation on reduction in number and compensation. The number of employees in the service of a carrier shall not be reduced by reason of any action taken pursuant to the authority of this title (chapter) below the number as shown by the payrolls of employees in service during the month of May, 1933, after deducting the number who have been removed from the payrolls after the effective date of this Act (June 16, 1933) by reason of death, normal retirements, or resignation, but not more in any one year than 5 per centum of said number in service during May, 1933; nor shall any employee in such service be deprived of employment such as he had during said month of May or be in a worse position with respect to his compensation for such employment, by reason of any action taken pursuant to the authority conferred by this title (chapter)."

"(d) Property losses and expenses on transfer of employees; compensation. The coordinator is authorized and directed to provide means for

determining the amount of, and to require the carriers to make just compensation for, property losses and expenses imposed upon employees by reason of transfers of work from one locality to another, in carrying out the purposes of this title (chapter)."

U. S. C. Title 49, *Sec.* 257.

We further wish to call attention to another provision of Title I of this Act which establishes a procedure for appeals from orders of the Coordinator of Transportation to the Interstate Commerce Commission. The language establishing the jurisdiction of the Commission on appeal is significant and reads as follows:

"Any interested party, including, among others, any carrier, subsidiary, shipper, or *employee*, or any group of carriers, shippers, or *employees*, or any state commission, or the governor of any state, or the official representative or representatives of any political subdivision thereof, dissatisfied with any order of the coordinator may, at any time prior to the effective date of the order, file a petition with the Commission asking that such order be reviewed and suspended pending such review, and stating fully the reasons therefor. Such petitions shall be governed by such general rules as the Commission may establish. If the Commission, upon considering such petition and any answer or answers thereto, finds reason to believe that the order may be *unjust to the petitioner or inconsistent with the public interest*, the Commission is hereby authorized to grant such review, and, in its discretion, the Commission may suspend the order if it finds immediate enforcement thereof would result in *irreparable damage to the petitioner, or work grave injury to the public interest*, but if the Commission suspends an order, it shall expedite the hearing and decision on that order as much as possible. Thereupon the

Commission shall, after due notice and a public hearing review the order and take such action in accord with the purposes of this title (chapter) as it finds to be *just and consistent with the public interest*, either confirming the order or setting it aside or reissuing it in modified form, and any order so confirmed or reissued shall thereafter remain in effect until vacated or modified by the Commission." (Emphasis supplied.)

U. S. C. Title 49, *Section* 259.

It will be noted that on final hearing under this section the Commission is empowered to confirm or set aside an order of the coordinator according to its finding that such order is or is not "just and consistent with the public interest." It is plain from a consideration of the preceding language that the word "just" was meant to include justice to private interests, the interests of employees among the number.

We have heretofore called attention to the fact that the Interstate Commerce Commission, acting under Section 259 (a part of Title I of the Emergency Transportation Act) would necessarily be called upon to consider the same general type of transaction as though it were acting under Section 5, Paragraph 4, as amended by Title II of this same Act. The interests of employees are as much a factor in the one situation as in the other. If the word "just" as used in Section 259 was intended to refer to employees' interests there is every reason to believe that Congress understood that the same word as appearing in Section 5, Paragraph 4, had the same meaning and conferred the same jurisdiction upon the Commission.

The discussions of this problem which took place during the Committee Hearings prior to the adoption of this Act were too extensive to reproduce here in full. We refer the court to Hearings before the Committee on Interstate and Foreign Commerce, House of Representatives, 73rd Congress, First Session, HR. 550, page 57, 86 *et seq.*, and page 162. Also, the Hearings before the *Committee* on Interstate Commerce, U. S. Senate, 73rd Congress, First Session, S. 1580, page 115 *et seq.*

It is conceded that the statutory language above quoted, and discussions in committee related primarily to the provisions of Title I of the Act. If Congress had the interest of employees in mind as being inherently involved in coordinations of carriers effected under Title I, and made such specific provisions for that protection, it may be asked as to why similar provisions were not inserted in Title II regarding other phases of the same problem. Only two possible answers to this question occur to us. Either Congress intended to deny to employees protection for their interests in proceedings under Title II, or it believed that provision was made for that protection. In light of the discussions in committee already referred to, it seems impossible that Congress could have given such careful and solicitous attention to the interests of employees under one Title of the Act and have been entirely unmindful of them in exactly the same situation arising under the other Title. The second alternative, therefore, appears to be more reasonable. We believe that there is a logical reason for the difference of language found in the provisions of these two Titles. Title I of this statute made provision for voluntary coordinations but added the extra sanction

of a measure of compulsion which could be applied by the Federal Coordinator of Transportation. It was eminently reasonable, therefore, that Congress should specifically enjoin upon the coordinator certain conditions which he must keep in mind in all questions of coordination. Under Title II, however, no governmental compulsion was contemplated. Hence no injurious effect upon employees from that source needed to be considered. Congress must have recognized that any consolidations, pooling arrangements, or acquisitions of control, authorized thereunder must first receive the approval of the Interstate Commerce Commission, to whose discretion was entrusted the imposition of conditions upon any proposal submitted to it.

The most reasonable conclusion, therefore, is that Congress when it enacted this statute fully recognized that the employees' interests were inherent in and germane to the purposes of the statute. In Title I it stated specifically the measure of protection to be accorded them. In enacting Title II, however, the Congress must have recognized that the Interstate Commerce Commission had the power to grant such protection by virtue of its authority to impose "just and reasonable conditions," and that no need existed to spell out any exact rule in the statute.

To summarize all of the foregoing, we have assumed that the interests of employees in cases of this kind were purely private in nature, and have seen that the Interstate Commerce Act conferred upon the Commission jurisdiction to act for the protection of such private interests in proper cases. We have supported this conclusion by an examination of the terminology of the Act itself and by a consideration of cases interpreting it.

We have noted that the power of the Commission to impose just and reasonable conditions for the protection of private interests is limited to cases where the interests protected and the conditions imposed are germane to the purpose of the statute. We have seen that the purpose of this statute is to rid the carriers of the burden of needless duplications of effort and services, and that such a purpose can only be effectuated through a corresponding loss to employees. The two are necessarily and inescapably connected. Neither can be intelligently considered without reference to the other. This fact, as we have shown, has been repeatedly recognized by the Commission, by the carriers, and by the Congress. From these facts we conclude that employees' interests are inherently involved in and germane to the problem of acquisitions of control of one carrier by another, and hence that the Commission has jurisdiction to impose conditions protecting those interests, so long as the conditions in question are just and reasonable.

II. INJURY TO EMPLOYEES GROWING OUT OF CONSOLIDATIONS OR ACQUISITIONS OF CONTROL ARE MATTERS AFFECTING THE PUBLIC INTEREST.

There has been some controversy in this and in other cases as to whether the phrase "public interest" as used in Section 5, Paragraph 4, of the Interstate Commerce Act is to be construed in a narrow sense as contemplating the interest of the public in the conduct of the nation's transportation system, or in a broader sense as including the more general interests of all sections of

the public which may be involved in a specific case. We do not propose to consider here the pros and cons of this controversy. Without in any way attempting to state an opinion regarding contentions which may be made by the parties to this case, we wish to make it clear that for the purposes of this argument we are adopting the narrower conception of public interest and will consider the matter purely from the transportation point of view. So considered, however, the phrase "public interest" is sufficiently broad to include the public effect of wholesale dismissals of employees as a result of consolidations of carriers or acquisitions of control of certain carriers by others. It must be conceded, of course, that if the fifty-odd employees of the Chicago, Rock Island & Gulf Railroad, and of its trustees who are directly involved in this case are dismissed from service, the interest of the public in them and in their work ceases with the severing of the connection between them and the transportation industry. The consequences of their dismissal, however, will not be limited to this particular railroad or this particular case. The repercussions will be felt on every railroad where a similar move is contemplated. The public interest which we assert is not that of a public concern regarding the fate of these dismissed employees, but rather of a public concern regarding the morale of employees who are still at work on this and other carriers pending a decision regarding their dismissal as a consequence of other combination proceedings.

To realize the importance of this situation it is necessary that the court have clearly in mind certain of its practical features. On the railroads of the country em-

ployees are accorded what are known as seniority rights. Typically, such rights entitle the individual employee to a preference in his employment in ratio to the length of his service period with the railroad. The general recognition of such rights has developed from two factors: First, the desire of the employee for a more secure tenure of employment, particularly in his declining years, and, second, the desire of the carrier to minimize labor turnover and assure for itself an adequate supply of trained and experienced employees to assist in the conduct of the business of railroading—one where training and experience are peculiarly essential. Typically, too, employees hold what is generally known as "division" or "point" seniority. Thus a train or engine service man is normally limited in the exercise of his seniority rights to a certain operating division of the railroad, while a mechanic or clerk is limited to a certain shop or office. If, as a result of the consolidation, a division, shop or office is abandoned, the seniority rights of all employees working there are destroyed. If the railroad industry were one offering increasing opportunity for employment this situation would not be serious, for the employee dismissed at one point might soon find new employment at another. It is a well known fact, however, that in recent years the railroads have been decreasing their working forces rather than increasing them. At every point where a seniority roster is maintained there is a long list of furloughed men, trained and experienced, who hold seniority rights as to positions at that point and who are anxiously awaiting reinstatement. The employee who is dismissed from a position at a point which has been abandoned as a result of a consolidation occupies the same status as a new applicant for employment

at any other point where he may seek work. Thus it follows that any employee at a point which would be abandoned in the event of consolidation is facing the prospect of a complete loss of means of earning a livelihood, if the consolidation is effected. That such a prospect is not conducive to a high morale or a high standard of working efficiency is obvious.

Again the situation might not be so critical if only casual efforts were being made to consolidate carriers or coordinate their operations, but such is not the case. A well developed movement is and has been in progress to effect such transactions on a wholesale basis. This movement is not only the result of carrier initiative, but is one fostered and encouraged by the federal government. It has been proceeding for a number of years and no doubt will continue for many years to come.

An excellent example of the situation is that afforded by the history of the two carriers involved in this case. Efforts to effect a combination have been in progress since August 24, 1932, when an application was filed with the Commission for approval of a complete merger of all of the lines in the Rock Island system. This application was granted but upon conditions which the applicant refused to accept. (See *Rock Island System Consolidation*, 193 I. C. C. 395.) The next step was taken in 1937 when the trustees of these two corporations made application for approval to merge the operation of the two estates. This application was dismissed by the Commission for lack of jurisdiction. (See *Chicago, Rock Island & Pacific Railway Company Trustees Merger of Operations*, 221 I. C. C. 611.) Both of these proposals involved elimination of the same group of employees

which is concerned in the present case. What must have been the mental attitude of these men and women who for a period of seven years have worked at the business of transportation while over their heads this sword was suspended by so meager a thread? Can it be believed that during that period their services constituted effective contributions to the carrying on of the business of transportation?

A number of years ago the state of Texas enacted a statute requiring that all railroad companies operating in the state must maintain therein their general shops and offices. Many of the large railroad systems desired to conduct railroad operations in Texas and were compelled to resort to the device of subsidiary companies. It has been recently established that this state law must give way before the Federal policy of consolidation as expressed in the Interstate Commerce Act. The inevitable result has been and will be that other systems like the Rock Island will apply for permission to consolidate their operations with those of their Texas subsidiaries. Thus we see that the situation of these Rock Island employees is shared by those of many other railroads in the state of Texas, and these other workers have reasonable grounds for apprehension as to the future of their positions. We are not citing the above example in an attempt to uphold the Texas statute, but merely to show that we have here a state-wide situation, not limited to the lines of the Rock Island.

Nor is this condition limited to a single state. It is nation-wide in scope. In 1920 encouragement of railroad consolidation became an integral part of federal policy, for in the Transportation Act of that year the Interstate

Commerce Commission was instructed to draw up a plan whereby the various railroads of the country were to be allocated among a limited number of large systems. (See *U. S. C. Title* 49, *Section* 5, *Paragraph* 2.) Such a plan has been prepared and published by the Commission. While the effects of this statutory provision are of doubtful value, there is no question but that it constituted an official recognition of the fact that the small railroads could scarcely hope for a long continued independent existence disassociated from the operations of some one of the larger systems. Notice was officially served upon the employees of such roads that many of them had but tenuous holds upon their positions. The provisions of the Emergency Transportation Act, already discussed at some length herein, served to emphasize these warnings.

As a result of the above and of the acts of the carriers in taking advantage of their statutory opportunities, there arose a widespread unrest among railroad employees generally, and among those in the service of the smaller lines in particular. An agitation developed to secure for these employees a measure of protection against the anticipated elimination of their opportunities for earning a living. This agitation culminated in the so-called Washington Agreement, which has also been given consideration above. Why were the carriers willing to execute this Agreement? We do not accuse railroad management of inhumanity, but on the other hand we do not credit it with motives purely philanthropic and disconnected with the corporate interests which it serves. It seems, therefore, apparent that the representatives of management were willing to execute the Washington agreement because they felt that the allaying of the fears

of the employees would do much to eliminate the unrest and lowered morale incident to the whole consolidation situation, and would improve the general efficiency of the industry. It is to be noted that this improved efficiency is the source of that very public interest which Section 5, Paragraph 4, of the Interstate Commerce Act was designed to preserve.

That the morale of employees is a matter vitally related to the public interest is clearly developed in the dissenting opinion in the case of *Railroad Retirement Board vs. Alton Railroad Company*, 295 U. S. 330. It is true that the question there considered was one of the existence of federal power, while here we are concerned with the question of whether or not that power was exercised. A reading of the opinion will reveal, however, that essentially the dissenting justices were considering the existence of a public interest in interstate commerce sufficient to support the regulation in question. When, as here, the power to pass upon questions of public interest has been delegated to an administrative commission and a question has been raised as to the extent of the power given, the same reasoning is applicable. We submit the following quotations from the opinion as constituting a clear discussion of the factors involved, and as being relevant to the issues raised in this case.

> "It was inevitable that, with the development of the transportation system of the country, requiring a vast number of employees, there should have been a growing appreciation of the importance of conditions of employment. It could not be denied that the sovereign power to govern interstate carriers extends to the regulation of their relations with their employees who likewise are engaged in interstate commerce. The scope of this sort of

regulation has been extensive. There has been not only the paramount consideration of safety, but also the recognition of the fact that fair treatment in other respects aids in conserving the peace and good order which are essential to the maintenance of the service without disastrous interruptions, and in promoting the efficiency which inevitably suffers from a failure to meet the reasonable demands of justice. An absolute duty to furnish safety appliances has been imposed, restrictions of hours of continuous service have been prescribed, standards of a day's work have been established for work and wages, the liability of carriers for injuries to employees has been regulated by the abrogation of the fellow servant rule and the limitation of defenses as to contributory negligence and assumption of risk, and provisions have been enacted to facilitate the amicable settlement of disputes and to protect employees in their freedom to organize for the purpose of safeguarding their interests. *St. Louis, I. M. & S. R. Co. vs. Taylor,* 210 U. S. 281, 52 L. Ed. 878, 31 S. Ct. 621; *Wilson vs. New,* 243 U. S. 332, 61 L. Ed. 755, 37 S. Ct. 298, L. R. A. 1917E, 938, Ann. Cas. 1918A, 1024; *Texas & N. O. R. Co. vs. Brotherhood of R. & S. S. Clerks,* 281 U. S. 548, 74 L. Ed. 1034, 50 S. Ct. 427.

After considering the above and other related matters the writer continues thus:

> "* * * I think that it is clear that the morale of railroad employees has an important bearing upon the efficiency of the transportation service. * * *"

From all of the foregoing we conclude, therefore, first, that the morale of railroad employees generally has been, is being, and will be injuriously affected by the current movement toward consolidation of the corporate agencies, the properties, and the operations of carriers;

and, second, that such an effect is within the scope of that public interest whose protection was entrusted to the Interstate Commerce Commission by Section 5, Paragraph 4, of the Interstate Commerce Act.

In this case the commission acted to eliminate the source of the evil, in part at least, by providing that employees who were retained in the service after the consummation of the lease which was authorized, should find themselves in no worse position financially than before; that the carriers must bear the burden of certain incidental financial losses due to transfers of employees who might be shifted to other points on the system, and that employees released from service were to receive a readjustment allowance for a limited period of time, or until they were actually able to readjust their lives to changed conditions and circumstances. We do not believe that these requirements can be challenged as unjust or economically unsound. They appear to be well designed to afford reasonable protection to the interests of the employees involved in this case, a reasonable assurance to other employees who are or may be similarly situated that they may henceforth proceed with their regular tasks unhampered by concern lest their positions be abolished and their interests ignored, and further that they provide a reasonable protection of the public interest inherent in this whole situation.

CONCLUSION

In conclusion we again emphasize the far-reaching importance of the issue which the court is called upon to decide. This is not only a proceeding designed to question the propriety of a particular order of the Interstate

Commerce Commission, but one intended to challenge the jurisdiction of the Commission to enter any order looking to the protection of employees' interests in any similar case. If this contention is maintained, it will have an effect far more extensive than that exercised upon the comparatively small group of workers who are directly involved. A consolidation of carriers may involve the interests of a dozen employees or of many thousands. (Cf. *Associated Railways Company Acquisition and Securities*, 228 I. C. C. 277, where it was estimated that 2,000 workers would be thrown out of employment if the suggested plan were consummated.) The decision of the lower court if permitted to stand will deprive the Commission of power to consider these substantial interests in any case, or under any circumstances, and no order can henceforth be made by it, or no conditions imposed which will afford that protection however just or reasonable such order or conditions may be.

In support of our contention that the decision of the lower court is erroneous we have shown:

First, If the employees' interests are considered to be purely private they are still subject to the protection of the Commission in a proper case, and the Commission and the courts have both upheld the existence of a jurisdiction to protect them.

The interests in question and the protection accorded by the Commission are germane to and inherent in the purposes of Section 5 of the Interstate Commerce Act, and have been so recognized by the Commission, the carriers themselves and the Congress. It is illogical to suppose that the Commission has been given jurisdiction to rule upon the propriety of a consolidation matter and yet

denied jurisdiction to consider an inevitable and inherent consequence of the course of action proposed.

Second, If, on the other hand, we consider that the Commission's jurisdiction is in some manner limited to considerations affecting the "public interest," we have shown that a denial of protection to employees in this sort of case must necessarily react directly upon employee morale and will result in a lessening of the efficiency of the agencies of transportation. Such an effect is a matter of public interest however narrowly that term may be defined.

Therefore, whether the case be considered as one involving public interest or private interest, it appears that the Commission was acting within the scope of its jurisdiction in attaching to its order the conditions in question. It follows, accordingly, that the ruling of the District Court was erroneous and should be reversed.

Respectfully submitted,

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Amici Curiae.

Toledo, Ohio, November 1st, 1939.

I do hereby certify that copies of the within motion, consent and brief have been delivered to the office of the Solicitor General of the United States and further copies have been mailed to Messrs. M. H. Bell and W. F. Peter, attorneys for the appellees.

WILLARD H. MCEWEN,

Corrected copy.

p. 11, 8

SUPREME COURT OF THE UNITED STATES.

No. 343.—October Term, 1939.

The United States of America and the Interstate Commerce Commission, Appellants, *vs.* Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, as Trustees of the Estate of the Chicago, Rock Island and Pacific Railway Company Etc.	Appeal from the District Court of the United States for the Northern District of Illinois.

[December 4, 1339.]

Mr. Justice Stone delivered the opinion of the Court.

This appeal raises the question whether the Interstate Commerce Commission, in approving and authorizing a lease of a railroad by one railroad company to another, under § 5(4)(b) of the Interstate Commerce Act as amended, (48 Stat. 217, 49 U. S. C., § 5(4)(b) enacted in substance as § 407(5)(6) of the Transportation Act of 1920, 41 Stat. 481), has authority to prescribe as a condition of its order, that certain employees of the lessor shall receive partial compensation for the loss which they may suffer, by reason of their discharge or transfer as a result of the lease.

Appellees are trustees of the Chicago, Rock Island & Gulf Company and of the Chicago, Rock Island & Pacific Railway Company, both in bankruptcy for purposes of reorganization under § 77 of the Bankruptcy Act. They applied to the Interstate Commerce Commission for authority under § 5(4)(b) to lease the railroad and properties of the Gulf Company to themselves as trustees of the Pacific Company at an annual rental equal to the net operating income of the leased property. On the application, which was twice heard by the Commission, evidence was submitted from which the Commission found that the Gulf Company, whose entire capital stock is owned by the Pacific Company, is owner of six hundred and thirty-two miles of railroad in Texas which it operates sep-

arately from the 8,138 miles of railroad of the Pacific Company; that the purpose of the proposed lease was to combine the operation of the two lines in order to effect savings in operating costs through the elimination of the Texas accounting offices of the Gulf Company.

The Commission found that the lease would not impose upon the public any change in conditions affecting train operation; that it would have no effect on rates or routes and would result in no change of service to the public. It found that the elimination of the Texas accounting offices would result in an annual saving of $100,000, six or seven thousand dollars of which would accrue to the Gulf Company and the remainder to the Pacific Company, to be effected through the ultimate dismissal of forty-nine of the Gulf accounting employees and the transfer of twenty others to the Chicago offices of the Pacific Company. The Commission also found that the welfare of the employees affected by the elimination of the accounting office is one of the matters of public interest which the Commission must consider in proceedings under § 5(4)(b).

It accordingly authorized the lease upon the conditions which it found to be just and reasonable: that for a period not exceeding five years each retained employee should be compensated for any reduction in salary so long as he is unable, in the exercise of his seniority rights under existing rules and practices to obtain a position with compensation equal to his compensation at the date of the lease; that dismissed employees unable to obtain equivalent employment be paid partial compensation for the loss of their employment in specified amounts and for specified periods depending on the length of their service, and that the transferred employees be paid their traveling and moving expenses including losses incurred through being forced to sell their homes. The maximum cost of compliance with the conditions, it was found, would be $290,000 spread over a period of five years, during which the savings effected by the lease would be not less than $500,000. The Commission found that the proposed lease, with the specified conditions "will be in harmony with and in furtherance of our plan for the consolidation of railroad properties and will promote the public interest."

In the present suit, brought by appellees, the district court of three judges (Urgent Deficiencies Act of October 22, 1913, 38 Stat. 208, 219, 28 U. S. C. §§ 45, 47a, granted the relief sought, and de-

creed that the conditions of the Commission's order be set aside and that the Commission be enjoined from enforcing them. The case comes here on appeal under § 238 of the Judicial Code, 28 U. S. C., § 345.

Appellees contend, as the district court held, that the Commission was without the authority of any act of Congress to attach the prescribed conditions to its order. Consequently, they argue that the courts may appropriately set them aside as of no effect, leaving the remainder of the order to stand as the Commission's unqualified approval of the lease, although the Commission gave no indication that it would have authorized the lease without the conditions.

Section 5(4)(a) provides that "it shall be lawful, with the approval . . . of the Commission, as provided in subdivision (b), for two or more carriers to consolidate or merge their properties . . . or for any carrier . . . to . . . lease . . . the properties of another . . . " Subdivision (b) provides that the Commission on application by the carrier or carriers concerned may, after hearing, authorize such a consolidation or lease, and directs that "if after such hearing the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed consolidation . . . [or] lease . . . will be in harmony with and in furtherance of the plan for the consolidation of railway properties established pursuant to paragraph (3) and will promote the public interest, it may enter an order approving such consolidation . . . [or] lease . . . upon the terms and conditions and with the modifications so found to be just and reasonable."

In *New York Central Securities Co.* v. *C. C. C. & St. L. Ry. Co.*, 287 U. S. 12, we pointed out that the phrase "public interest" in this section does not refer generally to matters of public concern apart from the public interest in the maintenance of an adequate rail transportation system; that it is used in a more restricted sense defined by reference to the purposes of the Transportation Act of 1920, of which the section is a part and which, as had been recognized in earlier opinions of this Court, sought through the exercise of the new authority given to the Commission to secure a more adequate and efficient transportation system. See *New England Divisions Cases*, 261 U. S. 184; *Dayton-Goose Creek Ry.* v. *United States*, 263 U. S. 456; *Texas & Pacific Railway Company* v. *Gulf, Colorado & Santa Fe Railway Company*,

270 U. S. 266, 277. Thus restricted, the term public interest "as used in the statute, is not a mere general reference to public welfare but as shown by the context and purposes of the Act has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency and to appropriate provision and best use of transportation facilities." *Texas* v. *United States*, 292 U. S. 522, 531.

Appellees do not challenge the Commission's contention that the conditions are germane to the transaction involved in the lease because the purpose of the conditions is to mitigate the direct effect of the lease upon the employees. See *United States* v. *Chicago, Milwaukee, St. Paul & Pacific Railroad Company*, 282 U. S. 311, 324, 339, 340. But they insist that the conditions which the Commission is permitted by this section to attach to its order must also conform to the standard of public interest which the statute sets up to guide the Commission's action. From this premise they argue that the prescribed conditions are unauthorized because unrelated to the public interest in its statutory sense. They maintain that a carrier's employees, as such, are not part of the public whose interest is to be promoted by the lease, and that their interest in keeping their employment without loss of compensation is of private concern and no part of that public interest in the maintenance of an adequate and efficient transportation system which the statute contemplates.

Accepting the premise, as we may for present purposes, without considering the contention of the Commission that the conditions if just and reasonable, need not be related to the other statutory standards, the issue is narrowed to a single question whether we can say, as matter of law, that the granting or withholding of the protection afforded to the employees by the prescribed conditions can have no influence or effect upon the maintenance of an adequate and efficient transportation system which the statute recognizes as a matter of public concern.

Appellees do not attack the sufficiency of the evidence on which the Commission's findings are based, and that evidence was not submitted to the district court for review. Hence we are free to disturb the findings only if we can say that there can be no rational basis for them. *Mississippi Valley Barge Line Co.* v. *United States*, 292 U. S. 282; *Swayne & Hoyt, Ltd.* v. *United States*, 300 U. S. 297, 304; *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125, 146.

Appellees do not deny that the use of part of the savings resulting from the lease to compensate the employees for the loss which it will occasion, is just and reasonable so far as the interest and relations of employer and employee are concerned; or that the lease will be in harmony with and further the Commission's plan for consolidation of the railroads as the Commission found. They urge only that the conditions imposed can have no relationship to the maintenance of an adequate and efficient transportation system and in consequence cannot in any circumstances be said to promote the public interest in the statutory sense.

The proposed lease in its relation to the transfer or dismissal of employees and to an adequate and efficient transportation system, is not to be viewed as an isolated transaction or apart from the Commission's plan for consolidation of the railroads. As a result of the enactment of the Transportation Act in 1920, consolidation of the railroads of the country, in the interest of economy and efficiency, became an established national policy, and the effective consolidation of the railroads in conformity to the provisions of the Act and to the plan of consolidation which the Commission was directed to prepare became a matter of public interest. The policy of consolidation is so intimately related to the maintenance of an adequate and efficient rail transportation system that the "public interest" in the one cannot be dissociated from that in the other. Hence, in considering whether the public interest under § 5(4)(b) will be promoted by the conditions of an order authorizing a consolidation or lease, the Commission is free to consider their effect upon the national policy of consolidation as well as their more immediate effect on the adequacy and efficiency of the transportation system.

Obedient to the mandate of § 5(2) of the Act the Commission has prepared and published a plan under which it is proposed that the railroads of the country be consolidated into a limited number of large systems. *Consolidation of Railroads*, 159 I. C. C. 522, 185 I. C. C. 403. By § 5 of the Act the ban on consolidation of railway carriers was removed, and acting under it the Commission has granted authority for numerous consolidations and leases in furtherance of the plan. In the preparation and execution of the plan it speedily became apparent that the great savings which would result from consolidation could not be effected without profoundly affecting the private interests of those immediately concerned in the maintenance of the existing nationwide railway system, the railroad

security holders and employees. The security holders are usually, though not always favorably affected by economies resulting from consolidation.[1] But the Commission has estimated in its report on unification of the railroads that 75% of the savings will be at the expense of railroad labor. Not only must unification result in wholesale dismissals and extensive transfers, involving expense to transferred employees, but in the loss of seniority rights which, by common practice of the railroads are restricted in their operation to those members of groups who are employed at specified points or divisions. It is thus apparent that the steps involved in carrying out the Congressional policy of railroad consolidation in such manner as to secure the desired economy and efficiency will unavoidably subject railroad labor relations to serious stress and its harsh consequences may so seriously affect employee morale as to require their mitigation both in the interest of the successful prosecution of the Congressional policy of consolidation and of the efficient operation of the industry itself,[2] both of which are of public concern within the meaning of the statute.

One must disregard the entire history of railroad labor relations in the United States to be able to say that the just and reasonable treatment of railroad employees in mitigation of the hardship imposed on them in carrying out the national policy of railway consolidation, has no bearing on the successful prosecution of that policy and no relationship to the maintenance of an adequate and efficient transportation system. As was pointed out by Com-

[1] In several cases the Commission has disapproved proposals for consolidations and for acquisition of control because of a failure to deal fairly with minority stockholders. Nickel Plate Unification, 105 I. C. C. 425; Unification of Southwestern Lines, 124 I. C. C. 401. In others it has approved the proposal on condition that these objections be removed. Buffalo, Rochester & Pittsburgh R. R., 158 I. C. C. 779; Buffalo & Susquehanna R. R. Corp Control, 162 I. C. C. 656; Upper Coos R. R., 166 I. C. C. 76; Springfield Terminal R. R. Co., 166 I. C. C. 90; Denver & Salt Lake R. R. Co., 170 I. C. C. 4; Saint Louis Southwestern R. R. Co., 180 I. C. C. 175. See United States v. Chicago, Milwaukee, St. P. & Pac. R. Co., 282 U. S. 311, 337.

[2] On several occasions strikes of railroad employees affected by consolidations of plant facilities have threatened. To avoid interruption of transportation service an Emergency Board was invoked in 1929 under the Railway Labor Act of 1926 to arbitrate the dispute between the railroad and the employees of the Texas & Pacific Railway Company. The Board awarded the employees compensation for loss from depreciation of the value of their homes (cf. Clause 4 in the order here involved). The Board, after extensive hearings, found that such a requirement was reasonable in view of the fact that railroads themselves had on several prior occasions compensated the employees affected. 28 Monthly Labor Review, 1191 (1929). See also 43 Monthly Labor Review, 867 (1936) where dismissal compensation was agreed upon in similar circumstances under threat of a strike.

missioner Eastman in his concurring opinion in this case the protection afforded to employees by the challenged conditions is substantially that provided in event of consolidation by an agreement entered into in May, 1936, between 219, the great majority, of the railroad lines of the country, and 21 labor organizations.[3] He also directed attention to the fact that the Committee of Six, three of whom were railroad executives, in their report to the President of December 23, 1938, recommended that the federal agency passing upon railroad consolidation "require as a prerequisite to approval a fair and equitable arrangement to protect the interests of . . . employees",[4] and that this report had been approved by the directors of the Association of American Railroads.

We can hardly suppose that the railroads, in entering into this agreement and endorsing this recommendation left out of account their own interest in the maintenance of transportation service or that their interest in this respect differs or is separable from that of the public interest. In fact, before this action by the railroads the Commission itself had taken the view that the welfare of dismissed employees must be considered in passing upon proposed consolidations,[5] and in its sixth annual report in 1892 it declared in recognition of the same principle, that "relations existing between railway corporations and their employees are always of public interest."[6] The Federal Coordinator of Railroads, in his fourth annual report to Congress in 1936, recommended the enactment of a comprehensive system of dismissal compensation, stating that such a system "would enhance the safety or efficiency of railroad service." H. Doc. No. 394, 74th Cong., 2nd Sess., p. 56.[7]

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[3] The Chicago, Rock Island & Pacific System, represented here by appellee, was a party to this agreement. 42 Monthly Labor Review 1503 (1936); 57 Traffic World 995 (1936).

[4] Report of Committee appointed September 20, 1938, by the President of the United States, to submit recommendations upon the general transportation situation (December 23, 1938).

[5] Consolidation of Railroads, 185 I. C. C. 403, 427; Unification of Lines in Southern New Jersey, 193 I. C. C. 183, 198; St. Paul Bridge & Terminal Railway Co. Control, 199 I. C. C. 588. For later cases to the same effect, see Associated Railways Company Acquisition and Securities, 228 I. C. C. 277, 336; Louisiana & Arkansas Ry. Co., Merger, 230 I. C. C. 156; Louisiana & Arkansas Ry. Co., Control, 233 I. C. C. 37, 123.

[6] Sixth Annual Report of Interstate Commerce Commission (1892), p. 323.

[7] For a similar conclusion, see J. Douglas Brown, et al., Railway Labor Survey, Social Science Research Council, Division of Industry & Trade (1933), 1, 94; Robertson, The Stake of Railroad Labor in the Transportation Problem, 187 Ann. Am. Acad. 88 (1936).

The now extensive history of legislation regulating the relations of railroad employees and employers plainly evidences the awareness of Congress that just and reasonable treatment of railroad employees is not only an essential aid to the maintenance of a service uninterrupted by labor disputes, but that it promotes efficiency, which suffers through loss of employee morale when the demands of justice are ignored. Title 3 of the Transportation Act of 1920[8] which was enacted at the same time as the provisions of § 5(4) (b), set up a "Labor Board" to decide railroad labor disputes involving grievances, rules and working conditions, and declared in § 301 "it shall be the duty of all carriers and their officers and employees and agents, to make every reasonable effort and adopt every available means to avoid any interruption to the operation of any carrier growing out of any dispute between the carriers or employees or subordinate officials." Congress has passed successive measures for arbitration of railroad disputes between railroad employees and employers, all aimed at the prevention of interruptions of railroad service through such disputes, and culminating in the passage of the Railway Labor Act of 1926, 44 Stat. 577, and in its amendments in 1934, 48 Stat. 1185, 45 U. S. C., §§ 151, 163; *Texas & New Orleans Railroad Co.* v. *Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548; *Virginia Railway Co.* v. *Federation*, 300 U. S. 515. By the Wagner Labor Relations Act of 1935, 49 Stat. 449, 29 U. S. C., 151, it recognized and sought to prevent the interference with interstate commerce which may ensue from labor disputes arising in industry not engaged in transportation. See *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 42; *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, 604.

The Safety Appliance Act of 1893, 27 Stat. 531; see *Southern Railway Co.* v. *United States*, 222 U. S. 20; the Hours of Service Act of 1907, 34 Stat. 1415; see *Baltimore & Ohio R. R. Co.* v. *In-*

[8]This Act resulted from the experiences of the Director-General in operating the railroads during the World War period. Sharfman, The Interstate Commerce Commission, Vol. I, p. 181. The Director-General recognized the necessity of maintaining a loyal and devoted personnel in the interest of uninterrupted service. Thirty-third Annual Report of the Interstate Commerce Commission (1919), p. 4. In agreements executed by the Director-General with several railroad unions, provision was made for protection of seniority rights and for free transportation for the employee, his family and household goods (cf. Clause 3 of order here involved), when consolidations of facilities were ordered by the Director-General. See Agreement between the Director-General of Railroads and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (1920), Rule 77.

terstate Commerce Commission, 221 U. S. 612, and the Federal Employers Liability Act of 1908, 35 Stat. 65; see *Second Employers' Liability Cases*, 223 U. S. 1, 51, were designed mainly to insure the safety and welfare of railroad employees and the constitutionality of those measures was sustained in part on the ground that they fostered the commerce in which the employees were engaged. In passing the Adamson Act of 1916, 39 Stat. 721, fixing the wages of railroad employees, Congress thought that it was safeguarding the railroads of the country from interruption which might result from labor disputes and the constitutionality of the Act was sustained on that ground. *Wilson* v. *New*, 243 U. S. 332, 351. And in the Act of 1934, as amended in 1937, 48 Stat. 1283; 50 Stat. 307, 45 U. S. C., §§ 201, 214, 228(a) to (r), providing for a retirement and pension plan for railroad employees, Congress declared in terms that the plan was adopted for the purpose of "promoting efficiency and safety in interstate transportation."

In the last regular session of Congress, an act to amend the Interstate Commerce Act was passed by the Senate, S 2009, 76th Cong., 1st Sess. The House passed a substitute bill embodying extensive changes. H. Rept. 1217, 76th Cong., 1st Sess. Both bills are now in conference. But both as passed contain a provision carrying into effect the recommendation of the Committee of Six, see S. Rept. 433, 76th Cong., 1st Sess., p. 29, by directing the Commission to require "as a prerequisite to its approval of any proposed transaction [consolidation or lease under § 5(4)(b)] a fair and equitable arrangement to protect the interests of the employees affected." Both bills as enacted declare it "to be the national transportation policy of Congress . . . to encourage fair wages and equitable working conditions, all to the end of developing, coordinating and preserving a national transportation system . . . by . . . rail . . . adequate to meet the needs of the commerce of the United States . . . " Congress has thus declared that fair and equitable provision for the compensation of losses thrown upon employees as the result of an authorized consolidation or lease promotes the national transportation policy by developing, coordinating and preserving the railroad transportation system.

In the light of this record of practical experience and Congressional legislation, we cannot say that the just and reasonable conditions imposed on appellees in this case will not promote the public interest in its statutory meaning by facilitating the national policy

of railroad consolidation; that it will not tend to prevent interruption of interstate commerce through labor disputes growing out of labor grievances, or that it will not promote that efficiency of service which common experience teaches is advanced by the just and reasonable treatment of those who serve. In the light of that record too we do not doubt that Congress, by its choice of the broad language of § 5(4)(b) intended at least to permit the Commission, in authorizing railroad consolidations and leases, to impose upon carriers conditions related, as these are, to the public policy of the Transportation Act to facilitate railroad consolidation, and to promote the adequacy and efficiency of the railroad transportation system.

The fact that a bill has recently been introduced in Congress and approved by both its houses, requiring as a matter of national railway transportation policy the protection of employees such as the Commission has given here, does not militate against this conclusion. Doubts which the Commission at one time entertained but later resolved in favor of its authority to impose the conditions, were followed by the recommendation of the Committee of Six that fair and equitable arrangements for the protection of employees be "required". It was this recommendation which was embodied in the new legislation. Sen. Rep. No. 433, 76th Cong., 1st Sess., p. 29. We think the only effect of this action was to give legislative emphasis to a policy and a practice already recognized by § 5(4)(b) by making the practice mandatory instead of discretionary, as it had been under the earlier act.

It is said that the statute, as we have construed it, is unconstitutional because not within the Congressional power to regulate interstate commerce and is a denial of due process. It is true that in *Railroad Retirement Board* v. *Alton Railroad Company*, 295 U. S. 330, in declaring the Railroad Retirement Act of June 27, 1934, 48 Stat. 1283, not to be a valid regulation of interstate commerce, it was said, among other reasons advanced to support that conclusion, that a compulsory retirement system for railroad employees can have no relation to the promotion of efficiency, economy or safety of railroad operation. But notwithstanding what was said there and even if we were doubtful whether the particular provisions made here for the protection of employees could have the effect which we have indicated upon railroad consolidation and upon the adequacy and efficiency of the railroad transportation

system, we could not say that the Congressional judgment that those conditions have a relation to the public interest as defined by the statute is without rational basis. Cf. *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177, 189, 191; *United States* v. *Carolene Products Co.*, 304 U. S. 144, 147; *Pitman* v. *Home Owners' Loan Corp.*, No. 10, October Term, 1939, decided November 6, 1939.

If we are right in our conclusion that the statute is a permissible regulation of interstate commerce, the exercise of that power to foster, protect and control the commerce with proper regard for the welfare of those who are immediately concerned in it, as well as the public at large, is undoubted. *Second Employers' Liability Cases, supra*, 47; *Dayton-Goose Creek Ry. Co.* v. *United States*, 263 U. S. 456, 478; *United States* v. *Carolene Products Co., supra*, 147; *Mulford* v. *Smith*, 307 U. S. 37. Nor do we perceive any basis for saying that there is a denial of due process by a regulation otherwise permissible, which extends to the carrier a privilege relieving it of the costs of performance of its carrier duties, on condition that the savings be applied in part to compensate the loss to employees occasioned by the exercise of the privilege. That was decided in principle in *Dayton-Goose Creek Railway Company* v. *United States, supra*. There it was held that the Fifth Amendment does not forbid the compulsory application of income, attributable to a privilege enjoyed by a railroad as a result of Commission action, to specified purposes "in the furtherance of the public interest in railroad transportation." § 422 (10), Transportation Act, 41 Stat. 490. Moreover we cannot say that this limited and special application of the principle, fully recognized in our cases sustaining workmen's compensation acts, that a business may be required to carry the burden of employee wastage incident to its operation, infringes due process. *Second Employers' Liability Cases, supra; New York Central R. Co.* v. *White*, 243 U. S. 188; *Mountain Timber Co.* v. *Washington*, 243 U. S. 219; *Cudahy Packing Co.* v. *Paramore*, 263 U. S. 418.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.